

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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BRANDON PACK AND JENNIFER  
DAVIS, Individually and on Behalf of Others  
Similarly Situated,

Plaintiffs,

vs.

INVESTTOOLS, INC., a corporation,  
Defendant.

MEMORANDUM DECISION AND  
ORDER DENYING DEFENDANT’S  
MOTION FOR LEAVE TO FILE  
RESPONSE TO PLAINTIFFS’  
SURREPLY BRIEF

Case No. 2:09-CV-1042 TS

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On January 4, 2010, this Court granted Plaintiff’s Motion for Leave to File Surreply Brief. Defendant now moves for leave to file a response to Plaintiff’s Surreply Brief.

Generally, parties “should be given an opportunity to respond to new material raised for the first time” in a reply memorandum or surreply brief.<sup>1</sup> “‘Material,’ for purposes of this framework includes both new evidence and new legal arguments.”<sup>2</sup> However, if the Court “does

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<sup>1</sup>*Green v. New Mexico*, 420 F.3d 1189, 1196 (10th Cir. 2005).

<sup>2</sup>*Id.*

not rely on the new material in reaching its decision” it may deny the opposing party’s motion for leave to file a response to the new material.<sup>3</sup>

Defendant argues for leave to file a response because Plaintiffs’ brief attached new declaration testimony, mischaracterized authority, and “contained other new arguments.”<sup>4</sup> However, other than Defendant’s single sentence laying out these claims, Defendant offers no explanation as to what material is new and why a response is needed. The proposed Response merely attacks a prior plaintiff’s credibility, re-cites case law, and restates arguments made in Defendant’s Memorandum in Support and Reply Memorandum. These arguments do not justify granting leave to file a response. It is hereby

ORDERED that Defendant’s Motion for Leave to File Response to Plaintiffs’ Surreply Brief (Docket No. 80) is DENIED.

DATED January 6, 2011.

BY THE COURT:

  
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TED STEWART  
United States District Judge

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<sup>3</sup>*Id.*

<sup>4</sup>Docket No. 80, at 2.